

# ARKANSAS SUPREME COURT

No. CR 06-939

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered      October 12, 2006

ISAAC DEWAYNE RUSSELL  
Petitioner

*PRO SE* MOTION FOR RULE ON  
CLERK [CIRCUIT COURT OF  
PULASKI COUNTY, CR 2003-3247,  
HON. JOHN W. LANGSTON, JUDGE]

v.

MOTION DENIED

STATE OF ARKANSAS  
Respondent

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## PER CURIAM

Judgment was entered in 2004 reflecting that the Pulaski County Circuit Court had found Isaac Dewayne Russell guilty of first-degree domestic battering and that the court had imposed a sentence of 144 months' imprisonment. The sentence was enhanced by an additional 48 months' imprisonment because the offense was committed in the presence of a child, resulting in a total sentence of 192 months' imprisonment. The Arkansas Court of Appeals affirmed. *Russell v. State*, CACR 05-241 (Ark. App. October 26, 2005).

Subsequently, petitioner timely filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition in an order entered on March 10, 2006. Petitioner filed his notice of appeal on April 14, 2006, and tendered the record on appeal to this court on July 12, 2006. Our clerk correctly declined to lodge it because the notice of appeal was late pursuant to Ark. R. App. P.–Civ. 4(a). The notice of appeal was filed on the thirty-fifth day after the entry of the trial court's order, making the notice of appeal untimely.

Now before us is petitioner's *pro se* motion for rule on clerk. When the issue of failure to perfect an appeal involves a notice of appeal, relief must be sought under Ark. R. App. P.–Crim. 2 or Ark. R. App. P.–Civ. 4 by filing a motion for belated appeal. *See McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Accordingly, we will treat petitioner's motion for rule on clerk as a motion for belated appeal.

As with all matters before this court, if an appellant fails to follow correct procedural requirements, the burden lies with the appellant to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). In *McDonald*, this court clarified its treatment of motions for rule on clerk and motions for belated appeals in criminal cases. There, we stated that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is “good reason.” *McDonald, supra*. The fact that an appellant is proceeding *pro se* does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*).

Here, petitioner maintains in his motion that the late filing of the notice of appeal was the fault of the Pulaski County Circuit Clerk, inasmuch as the clerk “was in error for not filing petitioner's notice of appeal in a timely manner[.]” When proceeding *pro se*, this court has specifically held that it is not the responsibility of the circuit clerk, circuit court, or anyone other than the *petitioner* to perfect an appeal. *Sullivan, supra*. Petitioner has stated no good reason for the late filing of the notice of appeal. Thus, the appeal was not perfected due to the fault of petitioner and the motion for belated appeal is denied.

Motion denied.